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10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA

12 ADAM VIGNOLA, Individually and On  
13 Behalf of All Others Similarly Situated,

14 Plaintiff,

15 v.

16 FAT BRANDS, INC., ANDREW A.  
17 WIEDERHORN, RON ROE, JAMES  
18 NEUHAUSER, EDWARD H. RENSI,  
19 FOG CUTTER CAPITAL GROUP INC.,  
20 and TRIPOINT GLOBAL EQUITIES,  
21 LLC,

22 Defendants.

Case No.: 2:18-cv-07469-PSG-PLA

**SECOND AMENDED CLASS  
ACTION COMPLAINT FOR  
VIOLATIONS OF THE FEDERAL  
SECURITIES LAWS**

**JURY TRIAL DEMANDED**

1       Lead Plaintiffs Charles Jordan and David Kovacs (“Plaintiffs”) individually and  
2 on behalf of all other persons similarly situated, by Plaintiffs’ undersigned attorneys,  
3 for Plaintiffs’ second amended complaint against Defendants (defined below), allege  
4 the following based upon personal knowledge as to Plaintiffs and Plaintiffs’ own acts,  
5 and information and belief as to all other matters, based upon, *inter alia*, the  
6 investigation conducted by and through Plaintiffs’ attorneys, which included, among  
7 other things, a review of the Defendants’ public documents, conference calls and  
8 announcements made by Defendants, United States Securities and Exchange  
9 Commission (“SEC”) filings, wire and press releases published by and regarding FAT  
10 Brands, Inc. (“FAT Brands” or the “Company”), analyst reports, news articles and  
11 information readily obtainable on the Internet. Plaintiffs believe that substantial  
12 evidentiary support will exist for the allegations set forth herein after a reasonable  
13 opportunity for discovery.

#### 14                                   **NATURE OF THE ACTION**

15       1.       This is a securities class action on behalf of all persons who purchased  
16 FAT Brands common stock pursuant to FAT Brands’ October 23, 2017 initial public  
17 stock offering (the “IPO”), seeking to pursue remedies under the Securities Act of 1933  
18 (the “Securities Act”).

19       2.       This lawsuit asserts strict liability claims under sections 12(a)(2) and 15  
20 of the Securities Act. Section 12(a)(2) provides buyers of securities an express remedy  
21 for material misstatements or omissions made by any seller or solicitor in connection  
22 with the offer or sale of the issuer’s securities involving a prospectus or oral  
23 communications. Section 15 extends joint and several liability to those who controlled  
24 any person or entity held liable under § 12(a)(2). Plaintiffs expressly disclaim any  
25 allegations or inference of fraud or intentional wrongdoing as to the claims asserted  
26 herein.

1           3. As alleged herein, Defendants are responsible for false and misleading  
2 statements and omitting material facts in connection with Fat Brands' IPO.  
3 Specifically, Defendants authorized or signed the Registration Statement for the IPO  
4 and an Offering Circular (collectively, the "Offering Documents") and/or participated  
5 in making false and misleading statements and omitting material facts in connection  
6 with the IPO roadshow. Accordingly, Plaintiffs bring claims against FAT Brands,  
7 certain of FAT Brands' executive officers and directors who signed the Offering  
8 Circular and/or authorized and/or participated in making the false or misleading  
9 statements and omissions contained therein and in connection with the IPO roadshow  
10 (as identified below), and Defendant TriPoint Global Equities, LLC ("TriPoint"),  
11 pursuant to §§12 and 15 of the Securities Act.

12           4. FAT Brands' IPO was engineered primarily by Defendant Fog Cutter  
13 Capital Group, Inc. ("FCCG") and its CEO and controlling shareholder, Defendant  
14 Andrew W. Wiederhorn.

15           5. Wiederhorn had previously pleaded guilty to two felonies and was  
16 sentenced to 18 months imprisonment and over \$2 million in restitution and fines.

17           6. FCCG had been publicly listed on NASDAQ, but was delisted for actions  
18 contrary to the public interest when it gave Wiederhorn a bonus matching his restitution  
19 payment as part of a financial package worth approximately \$4.75 million upon his  
20 guilty plea and imprisonment, and on top of that allowed him to retain his titles and  
21 responsibilities with FCCG. FCCG was then delisted *again*, this time from the OTC  
22 Bulletin Board, when its Fatburger subsidiaries declared bankruptcy after FCCG was  
23 unable to obtain financing in connection with a string of acquisitions, substantially  
24 identical to the acquisition plan FAT Brands proposed to undertake.

25           7. FCCG opted to conduct FAT Brands' IPO as a Regulation A+ offering  
26 instead of a traditional offering because a Regulation A+ offering involves a more  
27 streamlined, expedited review process. In a Regulation A+ offering, a company is  
28

1 required to make its offering memorandum public just 21 days prior to SEC  
2 qualification, with a lower level of scrutiny than for a traditional public offering.

3 8. Defendants made material misleading statements and omissions in the  
4 Company's Offering Documents and in roadshow presentations promoting the IPO.  
5 Specifically, Defendants failed to disclose and misrepresented that (1) FCCG had  
6 previously been delisted from NASDAQ in light of FCCG's one-sided agreements with  
7 Wiederhorn, allowing Wiederhorn to exercise substantial influence over the company  
8 during his incarceration and compensating him approximately \$4.75 million to do so;  
9 and (2) FCCG and FAT Brands' leadership team had previously run the Fatburger  
10 subsidiaries into bankruptcy in connection with the attempt to undertake an acquisition  
11 spree much like the one they were undertaking at FAT Brands at the time of the  
12 Company's IPO, resulting in FCCG's stock being delisted a second time.

13 9. The IPO raised gross proceeds of \$24 million, selling two million shares  
14 of FAT Brands common stock at \$12 per share.

15 10. Investors were fooled by Defendants' misleading disclosures and suffered  
16 damages after purchasing FAT Brands common stock pursuant to the IPO. The price  
17 of FAT Brands common stock has plummeted since the IPO and currently trades at less  
18 than half its IPO price of \$12.

### 19 **JURISDICTION AND VENUE**

20 11. The claims asserted herein arise under and pursuant to §§12(a)(2) and 15  
21 of the Securities Act (15 U.S.C. §§77l(a)(2) and 77o).

22 12. This Court has jurisdiction over this action pursuant to §22 of the  
23 Securities Act (15 U.S.C. §77v) and 28 U.S.C. §1331.

24 13. Venue is properly laid in this District pursuant to §22 of the Securities Act  
25 and 28 U.S.C. §1391(b) as the Company's headquarters is located in this Judicial  
26 District.



1 Franchise Concepts, Inc. since 2011. As one of FAT Brands’ executives in the IPO  
2 working group, Wiederhorn reviewed and approved, and participated in making,  
3 statements to investors, including statements in the Offering Documents, which he  
4 signed, and the Company’s IPO roadshow. Wiederhorn participated in the roadshow  
5 on behalf of FAT Brands and FCCG and pitched the IPO to investors, including  
6 through a live online “webinar.” Wiederhorn received a \$400,000 cash bonus and  
7 15,000 shares of FAT Brands common stock for completing the IPO.<sup>1</sup>

8 19. Defendant FCCG was an Oregon-based company that, at the time of the  
9 IPO, owned 100% of FAT Brands’ common stock and voting power. Following the  
10 IPO, FCCG retained 80% of FAT Brands’ common stock and voting power.  
11 Wiederhorn founded FCCG and was the chairman of its board of directors at the time  
12 of FAT Brands’ IPO. FCCG’s common stock was previously listed on NASDAQ, but  
13 NASDAQ delisted FCCG for actions contrary to the public interest. FCCG then traded  
14 on over the counter (“OTC”) markets, but was then delisted again from the OTC  
15 Bulletin Board in connections with the bankruptcies of FCCG’s operating subsidiaries.

16 20. As described in FAT Brands’ Prospectus, FCCG, as the controlling  
17 shareholder of FAT Brands, “exercised significant influence over corporate  
18 management and affairs of FAT Brands” and “controlled virtually all [FAT Brands]  
19 matters requiring stockholder approval.” In that capacity, FCCG, through its  
20 executives, representatives, and authorized agents orchestrated the plan to effectuate  
21 the FAT Brands IPO by, among other things: (i) conducting the IPO as an expedited  
22 Regulation A+ offering; (ii) reorganizing its operating subsidiaries and contributing  
23 those subsidiaries to FAT Brands in exchange for a \$30 million promissory note, (iii)  
24 negotiating and acquiring the Ponderosa & Bonanza and Hurricane Grill brands that  
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26  
27 <sup>1</sup> The 15,000 shares Wiederhorn received became liquid and assumed a market value  
28 of \$180,000 upon consummation of the IPO.

1 would be integrated into FAT Brands, post-IPO; and (iv) preparing the Prospectus,  
2 SEC filings, roadshow presentations, and other offering materials that were necessary  
3 to take FAT Brands public.

4 21. FCCG's key senior executives served in dual capacities as senior  
5 executives at FAT Brands at all relevant times. Wiederhorn served simultaneously as  
6 FCCG's Chairman and CEO and as FAT Brands' CEO, President, and Board member.  
7 Defendant Roe served as CFO for both FCCG and FAT Brands. Donald Berchtold  
8 served as the COO for both FCCG and Fatburger.

9 22. FCCG, through its top executives and representatives, engaged in  
10 "drafting sessions" in connection with the FAT Brands IPO between June and October  
11 2017. During these sessions, FCCG's representatives reached understandings with  
12 FAT Brands' representatives (to the extent they differed in identity) as to: (i) the  
13 strategy to best accomplish the IPO; (ii) the terms of the IPO including the price range  
14 at which FAT Brands stock would be sold; (iii) the language used in the Prospectus  
15 and statements used to market and solicit investor participation the IPO, and (iv) the  
16 Company's responses to the SEC in connection with the SEC's review of FAT Brands'  
17 registration statement.

18 23. FCCG, through its dominance and control over FAT Brands and  
19 overlapping leadership with FAT Brands, participated in drafting and disseminating  
20 the Prospectus. FCCG participated in crafting the statements made in connection with  
21 efforts to solicit investors for the IPO, including in the Prospectus, Offering Summary,  
22 roadshow presentations, and other offering materials. Those materials included  
23 statements that were materially untrue, misleading, and/or otherwise omitted material  
24 facts.

25 24. The IPO created a liquid market through which FCCG could monetize and  
26 sell its substantial stock holdings in FAT Brands. FCCG was also entitled to the lion's  
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28



1 share of dividends paid by FAT Brands, and was entitled to repayment of its highly  
2 favorable (to FCCG) \$30 million loan at a 10% rate of interest each year.

3       25. Defendant Ron Roe was the Company's Chief Financial Officer at the  
4 time of the Company's IPO, and until August 16, 2018, when he became the Senior  
5 Vice President of Finance for the Company.<sup>2</sup> As CFO, Roe oversaw the Company's  
6 financial reporting process. Roe also prepared, reviewed, and authorized the financial  
7 statements filed with the SEC, including critical information about the Company's  
8 financial health, business operations, growth prospects, which the Company presented  
9 to investors in the Prospectus and in the roadshow materials. Roe is also the CFO of  
10 FCCG, and served FCCG in that role at the time of the IPO.

11       26. As one of FAT Brands' principal executives in the IPO working group  
12 and in his capacity as FAT Brands' CFO, Roe reviewed, approved, and participated in  
13 making statements to investors, including statements in the Prospectus, which he  
14 signed. Roe assisted in the solicitation of the sale of FAT Brands stock in the offering  
15 by, among other things, preparing, reviewing, and authorizing the presentations and  
16 other materials used in the connection with the IPO roadshow. As CFO of both FAT  
17 Brands and FCCG, Roe authorized the inclusion of statements and information in the  
18 Prospectus, roadshow presentations, and other offering materials that were materially  
19 untrue, misleading, and/or otherwise omitted material facts. Roe received a \$300,000  
20 cash bonus and 15,000 shares of FAT Brands common stock for completing the IPO.<sup>3</sup>  
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24  
25 <sup>2</sup> Rebecca D. Hersinger replaced Roe as the Company's Chief Financial Officer,  
26 effective August 16, 2018.

27 <sup>3</sup> The 15,000 shares Roe received became liquid and assumed a market value of  
28 \$180,000 upon consummation of the IPO.



1           27.   Wiederhorn and Roe are executives of FAT Brands who participated in  
2 the Company's IPO roadshow and are sometimes referred to herein as the "Executive  
3 Defendants."

4           28.   Defendant James Neuhauser has been a member of FAT Brands' Board  
5 since October 2017, and held that position at the time of the IPO. As one of the three  
6 members of the Board at the time of the IPO, Neuhauser reviewed, approved, and  
7 participated in making statements to investors in the Offering Documents, which he  
8 signed.<sup>4</sup> Neuhauser was also a member of the Audit Committee of the FAT Brands'  
9 Board. Neuhauser thus oversaw the Company's financial reporting process and  
10 reviewed the Company's reports and financial statements filed with the SEC.

11           29.   Defendant Edward H. Rensi is, and was at the time of the IPO, the  
12 Chairman of FAT Brands' Board. Rensi served as one of the three members (at the  
13 time of the IPO) of the Board since its formation and became Chairman of the Board  
14 in October 2017. As a member of the Board, Rensi reviewed and approved, and  
15 participated in making, statements to investors in the Offering Documents, which he  
16 signed.

17           30.   Wiederhorn, Roe, Neuhauser, and Rensi signed or authorized the signing  
18 of the Offering Documents used to conduct the IPO. They knew and intended that the  
19 Offering Documents would be used to promote the IPO and to solicit investors to  
20 purchase shares in the IPO. Wiederhorn, Roe, Neuhauser, and Rensi are sometimes  
21 referred to herein as "Individual Defendants."

22           31.   Defendant TriPoint is an investment banking firm that, along with its  
23 crowd-funding subsidiary, Banq, served as the underwriter of the IPO, acting as both  
24

25  
26 <sup>4</sup> Defendants Neuhauser and Rensi signed the Offering Documents through the  
27 signature of Defendant Wiederhorn, who signed the Offering Documents both in his  
28 own capacity as President and CEO and separately as attorney-in-fact on behalf of  
Defendants Neuhauser and Rensi.

1 Lead Manager and Book Runner. TriPoint participated in drafting and disseminating  
 2 the Offering Documents used to conduct the IPO, and participated in drafting and  
 3 making statements in connection with efforts to sell shares in the IPO, including the  
 4 Offering Documents, roadshow presentations, and other materials appearing on  
 5 TriPoint's and Banq's websites. TriPoint built the broker-dealer syndicate that handled  
 6 the offering transactions. The Company paid TriPoint \$1.8 million for its role in selling  
 7 shares in the IPO, or 7.42% of the IPO's gross proceeds. TriPoint also obtained an  
 8 agreement from FAT Brands to indemnify and hold TriPoint harmless from any  
 9 liability under federal securities laws, and ensured prior to the IPO that FAT Brands  
 10 had secured millions of dollars of coverage in directors' and officers' liability  
 11 insurance.

## 12 **SUBSTANTIVE ALLEGATIONS**

### 13 **Company Background**

14 32. FAT Brands is a franchisor. Rather than owning or operating actual  
 15 restaurant locations, FAT Brands generates revenues primarily by charging its  
 16 franchisees an initial franchise fee and ongoing royalty fees. At the time of the IPO,  
 17 FAT Brands was the franchisor of two fast casual restaurant brands: Fatburger and  
 18 Buffalo's Cafe/Buffalo's Express. According to the IPO Offering Documents, at the  
 19 time of the IPO FAT Brands "intend[ed] to complete the acquisitions [of] Ponderosa  
 20 and Bonanza [steakhouses], including one company-owned restaurant, concurrently  
 21 with the consummation of" the IPO, which would add a third fast-casual restaurant  
 22 brand concept to FAT Brands' portfolio. At the time of its IPO, FAT Brands' portfolio  
 23 of restaurants spanned 176 locations across seven states and 18 countries.

24 33. As a franchisor, FAT Brands generally did not own or operate actual  
 25 restaurant locations. Instead, FAT Brands historically generated relatively strong  
 26 margins (compared to other restaurant companies) by charging franchisees an initial  
 27 franchise fee and ongoing royalty payments. According to the Offering Documents,  
 28

1 FAT Brands’ “asset light franchisor model provide[d] the opportunity for strong profit  
2 margins and an attractive free cash flow profile while minimizing restaurant operating  
3 company risk, such as long-term real estate commitments or capital investments.”

4 34. Prior to the IPO, FAT Brands’ flagship operating subsidiary, Fatburger,  
5 accounted for the overwhelming majority of the Company’s locations, revenues and  
6 profits, with 157 Fatburger locations across five states and 18 countries.

7 35. FAT Brands’ other operating subsidiary, Buffalo Cafe, accounted for an  
8 additional 19 locations at the time of the IPO. Buffalo’s Express, which is a smaller,  
9 fast-casual variant of Buffalo’s Cafe, was co-branded with Fatburger so that at the time  
10 of the IPO there were an additional 68 co-branded Buffalo’s Express/Fatburger  
11 locations.

12 36. FAT Brands also had plans to add more restaurant brands to its portfolio  
13 at the time of the IPO. According to the Offering Circular, the Company intended to  
14 complete the acquisition of Homestyle Dining LLC, which owned Ponderosa  
15 Franchising Company and Bonanza Restaurant Company (together, “Ponderosa &  
16 Bonanza”) concurrently with the consummation of the IPO. At the time of the IPO  
17 there were 100 Ponderosa and 20 Bonanza restaurants operating under franchise and  
18 sub-franchise agreements in 19 states, and in countries as varied as Canada, the United  
19 Arab Emirates, Egypt, Qatar, Taiwan, as well as one company-owned Ponderosa  
20 restaurant in the United States.

### 21 **The Checkered Past of Wiederhorn and FCCG**

22 37. In 2004, Wiederhorn pleaded guilty to two felony charges in connection  
23 with his former company, the predecessor to FCCG, and the collapse of Capital  
24 Consultants, LLC, an investment advisor for union pension plans which lost  
25 approximately \$350 million in union pension funds due to fraudulent and failed  
26 investments. Wiederhorn pleaded guilty to (1) giving an illegal gratuity to Capital  
27 Consultants CEO Jeff Grayson; and (2) filing a false tax return. He was sentenced to  
28

1 18 months in prison and was ordered to pay a \$25,000 fine and \$2 million in restitution  
2 to the Capital Consultants receiver.

3 38. The day before Wiederhorn entered into the plea deal, he signed an  
4 agreement with FCCG, under which FCCG, while acknowledging the plea agreement  
5 and imminent incarceration, nonetheless provided Wiederhorn with approximately  
6 \$4.75 million in benefits. Wiederhorn's agreement with FCCG stated that (1) he would  
7 retain his titles and responsibilities with FCCG; (2) he would receive his annual salary  
8 of \$350,000, bonuses, and other benefits while imprisoned, and (3) FCCG would pay  
9 Wiederhorn a \$2 million "leave of absence payment," which matched precisely the  
10 amount he was ordered to pay in restitution. FCCG entered the agreement ostensibly  
11 to retain Wiederhorn's "good will, cooperation and continuing assistance, and in  
12 recognition of Wiederhorn's past service to the Company, to help avoid litigation and  
13 for . . . other reasons." FCCG knew Wiederhorn would use the \$2 million payment to  
14 pay his court-ordered restitution. FCCG disclosed this information and the \$4.75  
15 million cost of its agreement with Wiederhorn in its SEC filings. The same year that  
16 FCCG entered into the deal with Wiederhorn, it reported a net loss of \$3.93 million.

17 39. FCCG had also previously entered into an agreement with Wiederhorn to  
18 amend his employment contract in 2003, more than two years *after* it had known about  
19 the government investigation of Wiederhorn that led to his eventual guilty plea. Under  
20 the 2003 amendment, if FCCG terminated Wiederhorn without cause, it would have  
21 owed him three times his annual salary, three times his largest annual bonus from the  
22 last three years, unreimbursed business expenses, and accrued but unpaid base salary  
23 and bonuses – or approximately \$6 million in June 2004 – all as a lump-sum payment  
24 within ten days. Before the 2003 amendment, termination "for cause" included any  
25 felony conviction other than a traffic offense. The 2003 amendment changed the  
26 relevant provision to limit the definition of a "for cause" termination of Wiederhorn to  
27 only a conviction for a felony *involving FCCG*.

1        40. FCCG had been listed on the NASDAQ, but in July 2004, NASDAQ  
2 delisted FCCG. NASDAQ decided that it was contrary to the public interest for FCCG  
3 to remain listed in light of FCCG's patently one-sided agreements with Wiederhorn,  
4 FCCG's controlling shareholder and CEO, and because Wiederhorn was not only  
5 exercising substantial influence over the company during his incarceration, but  
6 receiving handsome compensation for it.

7        41. On August 15, 2003, FCCG completed a \$7 million investment and  
8 financing package for Fatburger, acquiring the remainder of the company in 2011.  
9 Wiederhorn founded and controlled FCCG as its majority shareholder. He became  
10 Fatburger's CEO in 2006 and continued to serve as FCCG's Chairman and CEO, as  
11 well as Fatburger's CEO and President, through the time of FAT Brands' IPO.

12        42. In 2006, after Wiederhorn's appointment as CEO of Fatburger, Fatburger  
13 was barred from selling additional franchises in California for several months due to  
14 Wiederhorn's prior felony convictions.

15        43. Then, after borrowing approximately \$3.85 million from financier  
16 General Electric Capital Business Asset Funding Corp. ("GE"), on or about March 31,  
17 2009, several Fatburger subsidiaries owned and operated by FCCG received notices of  
18 default and demand for payment from GE. The more than thirty Fatburger subsidiaries,  
19 including Fatburger Restaurants of California and Fatburger Restaurants of Nevada,  
20 were unable to repay GE and filed for Chapter 11 bankruptcy protection on April 7,  
21 2009. Fatburger sought to restructure the GE loans as a part of the Chapter 11  
22 bankruptcy cases, which were jointly administrated. As a result of the bankruptcy  
23 proceedings, FCCG was forced to sell off many of its Fatburger restaurants at auction.

24        44. On April 8, 2009, after the bankruptcy filings, FCCG announced that it  
25 had failed to satisfy a listing requirement of the OTC Bulletin Board, where its stock  
26 had been listed after being delisted from NASDAQ. FCCG had failed to timely file its  
27 financial reports with the SEC, and announced that it expected its stock to no longer be  
28

1 listed on the OTC Bulletin Board. The approximately eight million outstanding shares  
2 of FCCG common stock became worthless.

3 45. In 2011, FCCG acquired the 25-unit Buffalo's Cafe brand and converted  
4 both the Fatburger and Buffalo's Cafe brands into a franchisor model. After acquiring  
5 Buffalo's Cafe, FCCG developed the Buffalo Express concept and rolled out  
6 cobranded Fatburger/Buffalo Express restaurants. FCCG reorganized Fatburger and  
7 Buffalo's Café under FAT Brands Inc. in 2017 for the purpose of effectuating the IPO.

8 46. In March 2017, FCCG agreed to acquire Homestyle Dining LLC, the  
9 franchisor of the Ponderosa & Bonanza restaurants, planning to use the proceeds from  
10 the anticipated FAT Brands IPO to fund the acquisition.

#### 11 **FCCG's Control of FAT Brands**

12 47. At the time of the IPO, FCCG owned all eight million shares of FAT  
13 Brands common stock and controlled 100% of its voting power. FAT Brands was  
14 formed as a Delaware corporation on March 21, 2017, for the purposes of completing  
15 the IPO, acquiring new brands, and continuing the businesses of Fatburger and  
16 Buffalo's Café which were then being conducted as subsidiaries of FCCG.

17 48. At the time of the IPO, Wiederhorn was serving as President and CEO of  
18 FAT Brands as well as the Chairman and CEO of FCCG. Roe, then the Senior Vice  
19 President and CFO of FAT Brands, also served as CFO of FCCG at the time of the  
20 IPO.

21 49. Berchtold, Wiederhorn's father-in-law for thirty years, served as both  
22 President and Chief Operating Officer of Fatburger as well as President and COO of  
23 FCCG. Wiederhorn began working for Berchtold when Wiederhorn was 13. Berchtold  
24 served as Senior Vice President of Wilshire Financial Services Group ("WFSG"),  
25 which Wiederhorn founded. Wiederhorn also served as the Chairman, CEO, Secretary,  
26 and Treasurer for WFSG. Berchtold also served as FCCG's CEO during Wiederhorn's  
27 imprisonment.



1           50. FCCG, through Wiederhorn, Roe and other FCCG affiliates, planned to  
2 conduct FAT Brands' IPO as a Regulation A+, or "Reg A+," offering. Under Title IV  
3 of the 2015 Jumpstart Our Business Startups (JOBS) Act, a private company can raise  
4 public funding through a Reg A+ offering. A Reg A+ offering involves a relatively  
5 streamlined, expedited review process. In a Reg A+ offering, a company is required to  
6 make its offering memorandum public just 21 days prior to SEC qualification. In light  
7 of Wiederhorn's felonies and prison sentence and FCCG's *two* prior delistings,  
8 Wiederhorn and FCCG opted to pursue a Reg A+ offering in lieu of a traditional IPO  
9 to avoid the heightened scrutiny that a traditional IPO would entail.

10           51. Wiederhorn and FCCG and its affiliates planned for FAT Brands to sell  
11 two million shares of the Company's common stock through a Reg A+ offering to  
12 investors for \$12 per share, raising \$24 million in gross proceeds. FCCG would retain  
13 its eight million shares and thus 80% of the voting power of FAT Brands. FCCG also  
14 "contributed" its two operating subsidiaries, Fatburger and Buffalo's Café, to the  
15 Company in connection with the IPO, in exchange for a \$30 million promissory note.  
16 According to the Offering Circular, the Company planned to use \$10.55 million of the  
17 IPO proceeds to purchase Ponderosa & Bonanza, and to send \$9.5 million of the  
18 proceeds to FCCG to partially repay the debt. After the repayment of the \$9.5 million  
19 to FCCG, FAT Brands would assume a \$20.5 million debt obligation to FCCG, which  
20 would carry a 10% interest rate and mature five years following the IPO.

21           52. According to the Offering Circular, FAT Brands intended to pay annual  
22 dividends of \$0.48 per share. Notably, FCCG stood to receive the lion's share of those  
23 stock dividends, approximately \$3.84 million annually.

24           **The Offering Documents and Roadshow Documents Contained Misleading**  
25           **Statements and Omissions of Material Fact**

26           53. On or about May 5, 2017, FAT Brands filed its first draft registration  
27 statement with the SEC on Form 1-A (File No. 024-10737). Following several  
28



1 amendments made in response to comments received from the SEC, the Form 1-A was  
2 deemed qualified by the SEC on October 3, 2017 and utilized for the IPO. The  
3 registration statement and Offering Circular included therein were signed by  
4 Wiederhorn, Roe, Neuhauser, and Rensi.

5 54. By August 3, 2017 at the latest, FAT Brands, the Executive Defendants,  
6 FCCG (through its executive leadership in common with FAT Brands), and TriPoint  
7 commenced a multi-city roadshow to market FAT Brands common stock to the  
8 investing public using the Offering Documents. The roadshow was completed on or  
9 about October 20, 2017, and the IPO was priced at \$12 per share. Due to their extensive  
10 marketing efforts, Defendants raised \$24 million through the sale of two million shares  
11 of FAT Brands common stock.

12 55. As part of the IPO roadshow, on or about September 19, 2017, Defendants  
13 conducted a live interactive webinar, featured on VirtualInvestorConference.com, to  
14 promote FAT Brands' anticipated IPO. Defendant Wiederhorn, as CEO of both FAT  
15 Brands and FCCG, FAT Brands' controlling shareholder, hosted the webinar together  
16 with Mark Elenowitz, the CEO of TriPoint, and answered questions from potential  
17 investors about FAT Brands and the IPO. The webinar included a video presentation  
18 that contained material misstatements and omissions that defendants participated in  
19 making. At the beginning of the Webinar, Elenowitz directed investors to the Banq web  
20 portal, through which investors could access the Offering Documents and initiate the  
21 process to purchase shares in the IPO.

22 56. In addition to the roadshow presentations and statements, the Offering  
23 Documents were negligently prepared and, as a result, also contained false and  
24 misleading statements of material facts, omitted to state other facts necessary to make  
25 the statements made not misleading, and were not prepared in accordance with the rules  
26 and regulations governing their preparation.

1        57. At the time of the IPO, FAT Brands planned to acquire another restaurant  
2 brand immediately after the IPO. The Offering Documents expressly stated that “[i]n  
3 addition to our pending acquisition of Ponderosa and Bonanza, as of the date of this  
4 Offering Circular we have entered into a letter of intent to acquire an additional  
5 restaurant concept with approximately 60 franchised stores for approximately  
6 \$11,000,000, and are in discussions to acquire another restaurant concept with  
7 approximately 50 stores for a purchase price in the range of \$26-30 million. We intend  
8 to finance future acquisitions through a combination of borrowings under a proposed  
9 new credit facility and by issuing new equity securities, including preferred stock if  
10 available on terms satisfactory to us.”

11        58. In November 2017, FAT Brands announced the acquisition of Hurricane  
12 Grill & Wings (“Hurricane Grill”), for \$12.5 million. The Company’s Hurricane Grill  
13 acquisition, quick on the heels of its acquisition of Ponderosa & Bonanza, strained the  
14 Company’s marginal cash position and forced the Company to take on even more high-  
15 priced debt. Due to the lack of cash on hand and difficulties securing financing on  
16 palatable terms, FAT Brands was not able to close on the Hurricane Grill acquisition  
17 until June 2018, despite initial representations that the deal would close at the end of  
18 2017. In fact, according to the Company’s annual report for 2017, filed on Form 10-K  
19 with the SEC on April 2, 2018, the Company reported having just \$32,000 in cash on  
20 hand at the end of 2017, less than three months after the IPO.

21        59. Under the section titled “Risk Factors,” the Prospectus made the following  
22 representations concerning FCCG’s ownership and control of FAT Brands:

23        ***We are controlled by FCCG, whose interests may differ front those of***  
24        ***our public stockholders.***

25        Immediately following this Offering and the application of net proceeds  
26 from this Offering, FCCG will control approximately 80% of the  
27 combined voting power of our Common Stock, assuming the sale of the  
28 maximum number of shares in the Offering. FCCG will, for the  
foreseeable future, have significant influence over corporate

1 management and affairs, and will be able to control virtually all matters  
2 requiring stockholder approval. FCCG is able to, subject to applicable  
3 law, elect a majority of the members of our Board of Directors and  
4 control actions to be taken by us, including amendments to our  
5 certificate of incorporation and bylaws and approval of significant  
6 corporate transactions, including mergers and sales of substantially all  
7 of our assets.

8 60. The Prospectus portrayed FAT Brands as operating under the experienced  
9 and acclaimed leadership of its officers and directors. The Prospectus emphasized that  
10 the Company's leadership members were experienced and touted their track record of  
11 success in the restaurant industry as a competitive strength. For example, the  
12 Prospectus included the following statement:

13 *Seasoned and Passionate Management Team.* Our management team  
14 and employees are critical to our success. *Our senior leadership team*  
15 *has more than 200 years of combined experience in the restaurant*  
16 *industry, and many have been a part of our team since the acquisition*  
17 *of the Fatburger brand in 2003. We believe that our management*  
18 *team has the track record and vision to leverage the FAT Brands*  
19 *platform to achieve significant future growth.* In addition, through  
20 their holdings in FCCG, our senior executives will own a significant  
21 equity interest in the company following the consummation of this  
22 Offering, ensuring long-term commitment and alignment with our  
23 public shareholders. Our management team is complemented by an  
24 accomplished Board of Directors.

25 [Emphasis added].

26 61. The Offering Documents failed to disclose the bankruptcies filed by  
27 several of the Fatburger subsidiaries in 2009, which occurred under the direct  
28 supervision and management of FAT Brands' "seasoned" leadership team. The  
Offering Documents disclosed that Rensi filed for Chapter 11 bankruptcy protection in  
October 2015, and that WFSG, which Wiederhorn founded and served as CEO,

1 underwent a pre-packaged bankruptcy in November 1998 – more than ten years before  
2 the Fatburger subsidiaries’ bankruptcies.

3       62. Yet the Prospectus did not disclose that multiple Fatburger subsidiaries  
4 had filed for bankruptcy in 2009, while they were owned and operated by FCCG. At  
5 the time of the bankruptcies, FCCG was managed by Wiederhorn, Berchtold, and  
6 others who later served in leadership positions at FAT Brands. The Offering  
7 Documents also did not disclose that FCCG, the Company’s controlling shareholder,  
8 had previously had its stock delisted (for the second time) in connection with those  
9 bankruptcies.

10       63. Disclosure of the Fatburger bankruptcies, and of the resulting (second)  
11 delisting of FCCG, would have significantly altered the mix of information available  
12 to investors concerning the ability and experience of the leadership of FAT Brands at  
13 the time of the IPO. Defendants’ omission of these material facts rendered the  
14 statements about the experience and effectiveness of FAT Brands’ leadership  
15 materially false and misleading.

16       64. In November 2009, the Fatburger subsidiaries that entered Chapter 11  
17 bankruptcy filed a “Summary of the Circumstances that Led to the Filing of the  
18 Debtors’ Chapter 11 Cases.” In the Summary, the Fatburger subsidiaries stated that the  
19 subsidiaries of Fatburger, which was run by Wiederhorn and Berchtold and 83% owned  
20 by FCCG at the time, had “beg[u]n to experience financial problems as a result of: (1)  
21 a shortage in available restaurant financing, and (2) a decline in same store sales over  
22 the past three years.” The Fatburger subsidiaries had been forced to borrow from GE  
23 in order to finance an acquisition spree, but when GE refused to continue lending to  
24 them, “[t]he Debtors and their affiliates were not able to find alternate financing and  
25 were forced to finance the expenses ... from their existing cash flow.” “This strain on  
26 existing cash flow caused the Debtors to fall behind on their accounts payable and real  
27 property lease obligations,” forcing them into bankruptcy.



1 investors about the Company, its operations, and its financial prospects. TriPoint also  
2 organized a live interactive webinar during which Wiederhorn and the CEO of TriPoint  
3 presented information about FAT Brands and the offering to investors. TriPoint and  
4 Banq also created websites soliciting investments in the FAT Brands IPO that were  
5 accessible from TriPoint's and Banq's own home pages. TriPoint also participated in  
6 scripting and creating videos about FAT Brands and its IPO, and made them accessible  
7 from the Banq website, which also allowed investors to view the Offering Documents,  
8 open an account with Banq, and purchase shares of FAT Brands. Banq's online web  
9 portal, created and designed at the direction of TriPoint, provided investors direct  
10 access to information about the IPO, including the Prospectus, and the ability to initiate  
11 a purchase in the IPO. The IPO was sold through TriPoint's and Banq's websites, and  
12 TriPoint authorized, approved, participated in making, and communicated the  
13 statements in the roadshow videos to investors who purchased FAT Brands shares in  
14 the IPO through TriPoint's and Banq's websites.

15       70. TriPoint assisted the Company, FCCG, and the Individual Defendants in  
16 planning the IPO. During that process, TriPoint purportedly conducted a due diligence  
17 investigation into FAT Brands' business and operations. TriPoint was required to  
18 undertake the due diligence investigation in order to engage in the IPO. During the  
19 course of its investigation TriPoint had continual access to confidential corporate  
20 information concerning the Company's operations and financials and maintained  
21 constant contact and communications with the Company. TriPoint also met with the  
22 Company's employees and executives during drafting sessions starting no later than  
23 June 2017. During the drafting sessions TriPoint discussed with the Company, among  
24 other things, the strategy to consummate the IPO, the statements and disclosures  
25 included in the Offering Documents and in marketing efforts to promote the IPO, and  
26 the Company's responses to the SEC's comments concerning the SEC's review of the  
27 draft Offering Documents. TriPoint caused the Offering Documents to be filed with the  
28



1 SEC and declared qualified in connection with offers and sales thereof, including to  
2 Plaintiffs and the Class (as defined below).

3 71. The IPO was successful for FAT Brands and TriPoint, who sold two  
4 million shares of FAT Brands common stock to public investors at \$12 per share,  
5 raising \$24 million in gross proceeds (\$22.2 million net of underwriting fees and IPO  
6 costs).

7 72. The price of FAT Brands common stock has plummeted since the IPO and  
8 currently trades at approximately \$5.84 per share, down over 50% from the Company's  
9 \$12 IPO price just over one year earlier.

10 **CLASS ACTION ALLEGATIONS**

11 73. Plaintiffs bring this action as a class action pursuant to Federal Rule of  
12 Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons other than  
13 defendants who purchased FAT Brands common stock pursuant to the Offering  
14 Documents issued in connection with the Company's IPO and who were damaged  
15 thereby (the "Class"). Excluded from the Class are Defendants, the officers and  
16 directors of the Company, members of the Individual Defendants' immediate families  
17 and their legal representatives, heirs, successors or assigns and any entity in which the  
18 officers and directors of the Company have or had a controlling interest.

19 74. The members of the Class are so numerous that joinder of all members is  
20 impracticable. Since the IPO, the Company's securities were actively traded on  
21 NASDAQ. While the exact number of Class members is unknown to Plaintiffs at this  
22 time and can be ascertained only through appropriate discovery, Plaintiffs believe that  
23 there are hundreds, if not thousands of members in the proposed Class. Record owners  
24 and other members of the Class may be identified from records maintained by FAT  
25 Brands or its transfer agent and may be notified of the pendency of this action by mail,  
26 using the form of notice similar to that customarily used in securities class actions.



1        75. Plaintiffs' claims are typical of the claims of the members of the Class as  
2 all members of the Class are similarly affected by defendants' wrongful conduct in  
3 violation of federal law that is complained of herein.

4        76. Plaintiffs will fairly and adequately protect the interests of the members  
5 of the Class and have retained counsel competent and experienced in class and  
6 securities litigation. Plaintiffs have no interests antagonistic to or in conflict with those  
7 of the Class.

8        77. Common questions of law and fact exist as to all members of the Class  
9 and predominate over any questions solely affecting individual members of the Class.  
10 Among the questions of law and fact common to the Class are:

- 11            a. whether Defendants issued materially false and misleading  
12 statements;
- 13            b. whether the Offering Documents were negligently prepared and  
14 contained materially misleading statements and/or omitted material  
15 information required to be stated therein;
- 16            c. whether other statements issued by Defendants were materially  
17 misleading and/or omitted material information;
- 18            d. the extent to which members of the Class have sustained damages  
19 and the proper measure of damages

20        78. A class action is superior to all other available methods for the fair and  
21 efficient adjudication of this controversy since joinder of all members is impracticable.  
22 Furthermore, as the damages suffered by individual Class members may be relatively  
23 small, the expense and burden of individual litigation make it impossible for members  
24 of the Class to individually redress the wrongs done to them. There will be no difficulty  
25 in the management of this action as a class action.

**COUNT I**  
**Violations of §12(a)(2) of the Securities Act**  
**Against Defendants FAT Brands, FCCG, the Executive Defendants,**  
**and TriPoint**

79. Plaintiffs repeat and reallege the allegations contained above as if fully set forth herein.

80. By means of the defective Offering Documents and other statements made in connection with the roadshow, Defendant FAT Brands, Defendant FCCG, the Executive Defendants and TriPoint promoted and sold FAT Brands' common stock to Plaintiffs and other members of the Class.

81. The Offering Documents and roadshow contained untrue statements of material fact, and/or concealed or failed to disclose material facts, as detailed above. These Defendants owed Plaintiffs and the other members of the Class who purchased FAT Brands common stock pursuant to the Offering Documents the duty to make a reasonable and diligent investigation of the statements contained in the Offering Documents to ensure that such statements were true and that there was no omission to state a material fact required to be stated in order to make the statements contained therein not misleading. These defendants, in the exercise of reasonable care, should have known of the misstatements and omissions contained in the Offering Documents as set forth above.

82. Plaintiffs did not know, nor in the exercise of reasonable diligence could Plaintiffs have known, of the untruths and omissions contained in the Offering Documents and roadshow presentation at the time Plaintiffs acquired FAT Brands common stock.

83. By reason of the conduct alleged herein, each of the Defendants named in this Count violated §12(a)(2) of the Securities Act. As a direct and proximate result of such violations, Plaintiffs and the other members of the Class who purchased FAT Brands common stock pursuant to the Offering Documents sustained substantial

1 damages in connection with their purchases of FAT Brands stock. Accordingly,  
 2 Plaintiffs and the other members of the Class who hold the common stock issued  
 3 pursuant to the Offering Documents have the right to rescind and recover the  
 4 consideration paid for their shares, and hereby tender their common stock to the  
 5 defendants sued herein. Class members who have sold their common stock seek  
 6 damages to the extent permitted by law.

7 84. This claim was brought within one year after the discovery of the untrue  
 8 statements and omissions in the Offering Documents and within three years after FAT  
 9 Brands shares were sold to the Class in connection with the IPO.

## 10 **COUNT II**

### 11 **Violation of §15 of the Securities Act**

#### 12 **Against Defendants FAT Brands, FCCG, and the Individual Defendants**

13 85. Plaintiffs repeat and reallege the allegations contained above as if fully set  
 14 forth herein.

15 86. This Count is brought pursuant to §15 of the Securities Act against  
 16 Defendant FAT Brands, Defendant FCCG, and the Individual Defendants.

17 87. The Individual Defendants each were control persons of FAT Brands by  
 18 virtue of their positions as directors and/or senior officers of FAT Brands. Each of these  
 19 Defendants had the ability to influence the policies and management of FAT Brands  
 20 by their voting and control over statements made by FAT Brands in the Offering  
 21 Documents. The Individual Defendants also each had a series of direct and/or indirect  
 22 business and/or personal relationships with other directors and/or officers and/or major  
 23 shareholders of FAT Brands.

24 88. FAT Brands controlled the Individual Defendants and all of its employees.

25 89. FCCG controlled FAT Brands prior to and following the Company's IPO.  
 26 As conceded in the IPO Offering Documents, FAT Brands was at the time of its IPO  
 27 and would remain following the IPO a "controlled company," and that "[t]he  
 28

1 stockholders of FCCG, including Mr. Wiederhorn, will indirectly benefit from the  
2 proceeds of this Offering.”

3 90. The Individual Defendants had a financial interest in taking the  
4 Company’s stock public in order to increase the value and marketability of their  
5 investment. Defendants FCCG and Wiederhorn had particularly strong motives to  
6 undertake the IPO in light of the fact that FAT Brands common stock was subject to a  
7 \$0.48 annual dividend, as FCCG owned eight million shares of FAT Brands common  
8 stock at the time of the IPO and Wiederhorn’s family owned 75% of FCCG at the time.

9 91. This claim was brought within one year after the discovery of the untrue  
10 statements and omissions in the Offering Documents and within three years after the  
11 Company’s securities were sold to the Class in connection with the IPO. It is therefore  
12 timely.

13 92. By reason of the above conduct, for which the Company, FCCG, the  
14 Executive Defendants, and TriPoint are primarily liable, as set forth above, the  
15 Individual Defendants are jointly and severally liable with and to the same extent as  
16 the Company’s pursuant to Section 15 of the Securities Act, 15 U.S.C. 77o.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs pray for relief and judgment as follows:

19 A. Determining that this action is a proper class action, certifying Plaintiffs  
20 as class representatives under Federal Rule of Civil Procedure 23 and appointing  
21 Plaintiffs’ counsel as Class Counsel;

22 B. Awarding compensatory damages in favor of Plaintiffs and the other Class  
23 members against all Defendants, jointly and severally, for all damages sustained as a  
24 result of Defendants’ wrongdoing, in an amount to be proven at trial, including interest  
25 thereon;

26 C. Awarding Plaintiffs and the Class their reasonable costs and expenses  
27 incurred in this action, including counsel fees and expert fees;

- 1 D. Awarding rescission or a rescissory measure of damages; and  
2 E. Such equitable/injunctive or other relief as deemed appropriate by the  
3 Court.

4 **JURY TRIAL DEMANDED**

5 Plaintiffs hereby demand a trial by jury.

6  
7 DATED: August 5, 2019

Respectfully submitted,

8 **THE ROSEN LAW FIRM, P.A.**

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 5, 2019 a copy of the foregoing was filed electronically via the Court's CM/ECF system. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on August 5, 2019

/s/ Laurence M. Rosen

Laurence M. Rosen